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October 6, 2006

BY ECF

The Honorable Viktor V. Pohorelsky
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Linde, et al. v. Arab Bank, PLC, 04-2799 (NG) (VVP) and related cases

Dear Magistrate Judge Pohorelsky:

We represent Arab Bank, Plc ("Arab Bank") in the above-referenced actions. We write in response to letters from plaintiffs' counsel to Your Honor dated September 29, 2006 and October 4, 2006 respectively. These letters concern Arab Bank's advice, pursuant to the Court's direction, that it would undertake to pursue authorization to produce documents protected by foreign bank secrecy laws by means of letters rogatory and other inter-governmental requests. (*Linde* Dkt. No. 233, Sept. 22, 2006 Minute Entry, ¶ 2.)

As a threshold matter, plaintiffs' letters are procedurally improper. Plaintiffs are asking this Court to reconsider its ruling providing Arab Bank an opportunity to pursue channels, in addition to those already pursued by the Bank, to obtain permission from judicial and regulatory authorities in Jordan, Lebanon and the Palestinian Authority for the disclosure of statutorily protected bank records. (Sept. 21, 2006 Tr. at 33:10-13.) Yet plaintiffs have failed to identify any "matters or controlling decisions" the Court has overlooked. Local Civil Rule 6.3. To the contrary, plaintiffs have cited materials provided by *Arab Bank* on the underlying motion to compel discovery and overrule Arab Bank's objections based on foreign bank secrecy laws (the "Bank Secrecy Motion").

Indeed, plaintiffs' most recent arguments contradict their principal position on the pending Bank Secrecy Motion, and, Arab Bank respectfully submits, should factor into the

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Court's ultimate decision on that motion whether Arab Bank should be compelled to produce documents protected by bank secrecy in the first place. In the context of the comity analysis central to the Bank Secrecy Motion, and specifically with respect to the competing government interests at stake, plaintiffs contended that the governments of Jordan and Lebanon (the Palestinian Authority has no recognizable interests according to plaintiffs) prioritize the prevention of terrorism over the interests of bank secrecy. Because Jordan and Lebanon are parties to certain international treaties providing for disclosure of bank records in criminal investigations of terrorists, plaintiffs claimed that "it is U.S. policy to require Jordan [and Lebanon] to waive bank secrecy" in civil ATA cases like the one at hand. (June 23, 2006 Expert Decl. of Jonathan M. Winer at 28-29.) The Court alluded to these treaties during the September 21, 2006 conference when discussing factors that favor production over preservation of bank secrecy. (Sept. 21, 2006 Tr. at 36:1-9.)

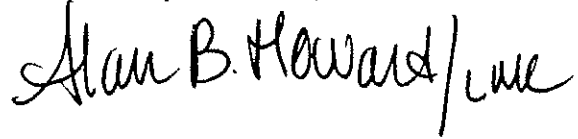
Now, however, perhaps emboldened by the Court's preliminary views on the issue, plaintiffs recognize, and even rely on, the official statements against disclosure of the relevant foreign governments. These official statements demonstrate "strong interest in bank secrecy" and are compelling evidence in favor of preserving bank secrecy. *Minpeco, S.A. v. Conticommodity Servs., Inc.*, 116 F.R.D. 517, 525 (S.D.N.Y. 1987). Defendant's position has been clear and consistent: bank secrecy is a strong sovereign interest in these countries and their strong interest in cooperating with other governments to prevent terrorism is irrelevant to plaintiff's civil suit for money damages. Nevertheless, defendant has and will continue to pursue all possible avenues for accommodating the policy of disclosure in this country while respecting the sovereign interests of countries where Arab Bank operates. Seeking government-to-government cooperation is a prudent way to seek such accommodation in the interests of comity.

Plaintiffs' specific arguments in support of their prediction that further efforts to obtain authorization for disclosure of documents covered by foreign bank secrecy laws will fail are incorrect. First and foremost, letters rogatory are entirely distinct from the unsuccessful judicial applications already made by Arab Bank in Jordan and the Palestinian Authority. The question presented on those prior applications was whether a discovery order of a U.S. court would qualify as a judicial exception to the foreign bank secrecy laws, which it does not. Letters rogatory, on the other hand, are requests for the foreign courts to issue their *own* orders of production, which would constitute a legal basis for production. (http://www.travel.state.gov/law/info/judicial/judicial_683.html.) Second, none of plaintiffs' arguments refutes the potential success of direct diplomatic communications from the U.S. Department of State. Third, plaintiffs' assertion that additional efforts to obtain authorization for disclosure of bank records in Lebanon are unnecessary given the prior permission of the Lebanese Special Investigation Commission is wrong: that permission covered one account only, and that is not authority for the release of records of any other account or evidence that the Commission will authorize the release of records of any other account. Arab Bank cannot of course predict the outcome of such requests, but plaintiffs' attempts to short circuit the process bespeaks a cynical attempt to manipulate the conflicts in legal systems to obtain an improper tactical advantage in this litigation.

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Finally, the notion of this Court imposing a deadline, let alone a December 1, 2006 deadline, for the responses to letters rogatory and diplomatic overtures of foreign governments, over whom neither the Court nor Arab Bank has any influence or control, is entirely inappropriate. Indeed, the suggestion of a December 1 deadline for completion of an international process further evidences plaintiffs' attempt to subvert Arab Bank's good faith attempts to obtain disclosure in a legal manner. Plaintiffs' persistent suggestion that Arab Bank's conduct in this litigation has been dilatory – which this Court has repeatedly rejected – merits no response.

Respectfully submitted,

A handwritten signature in black ink that reads "Alan B. Howard" followed by a stylized flourish or initials.

Alan B. Howard

cc: All counsel on attached service list by electronic mail

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BY ELECTRONIC DELIVERY:

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